IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

No. 574

ALEX MAZY,

Petitioner,

vs.

JOSEPH E. RAGEN, WARDEN ILLINOIS STATE PENITENTIARY, STATESVILLE, ILLINOS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION AND BRIEF.

FRANCES S. CLAMITZ,
AND
MARTIN S. GERBER,
Counsel for Petitioner.
1 N. LaSalle Street,
Chicago, Illinois

LUIS KUTNER,
Of Counsel for Petitioner.
330 S. Wells Street,
Chicago, Illinois

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PETITION AND BRIEF.

To the Honorable Judges of the Supreme Court of the United States:

Your Petitioner, Alex Mazy, respectfully shows unto the Court as follows:

That he is a citizen of the United States of America.

That on May 11, 1945, pursuant to his Habeas Corpus Petition and the return thereto, he was discharged by the District Court of the United States for the Northern District of Illinois, Eastern Division, from the custody of the respondent, Joseph E. Ragen, Warden of the State Penitentiary of Illinois at Statesville.

A certificate of probable cause was thereafter signed by one of the judges of the Circuit Court of Appeals and an appeal perfected by the said Warden to the Circuit Court of Appeals for the Seventh Circuit which Court reversed said judgment on June 28, 1945 and on July 13, 1945 denied a petition for rehearing filed by petitioner.

SUMMARY STATEMENT OF MATTER INVOLVED.

Your petitioner further shows that while resisting an arrest being made by officers of St. Clair County, Illinois, on June 14, 1927, he was shot in the right arm and that subsequently his arm was amputated as a result of such wound.

That while petitioner was held in custody under charge of robbery awaiting action of the grand jury of St. Clair County thereon, he was charged to be insane and was taken before the Circuit Court of St. Clair County, a Court of competent jurisdiction, where a jury was impanelled, a trial was had on the issue of petitioner's sanity, and the jury, after hearing the evidence, found a verdict as follows:

> "We the jury impanelled to inquire of and determine whether Alex Mazy is insane at this time, do find and report that said Alex Mazy is now insane and has become insance since the commission of the alleged crime." (Tr. 16.)

That the Circuit Court of St. Clair County then entered judgment that petitioner be committed to the hospital for the criminal insane at Menard, Illinois, until restored, and that petitioner be then returned to the authorities of St. Clair County, for trial of the charge of robbery; (Tr. 16) that thereupon petitioner was delivered to said hospital for the criminal insane and was there held in custody and imprisoned under the authority of said order (Tr. 15-16).

On September 26, 1927, petitioner was indicted by the grand jury of St. Clair County for armed robbery (Tr. 48).

On March 27, 1928, special order No. 3213 was issued by the Director of the Department of Public Welfare stating that "Alex Mazy, a patient in the Chester State Hospital, be discharged in the usual manner and in accordance with the law." (Tr. 52).

Without any hearing upon the sanity of petitioner, he was thereupon returned to the sheriff of St. Clair County where he was arraigned, counsel appointed for him, tried on said charge, and found guilty by a jury of robbery while armed, and sentenced to confinement from 10 years to life imprisonment in one of the State's penitentiaries (Tr. 50).

The only basis for the return of your petitioner to the authorities of St. Clair County is the said order of the Director of the Department of Public Welfare, based upon an expressed opinion of a "Mental Health Officer" (Tr. 52, 69).

No judicial determination was had, prior to petitioner's trial in May 1928, that petitioner had been restored to reason (Tr. 69).

Petitioner, while confined at Statesville in Will County, Illinois, had the validity of his imprisonment tested by

Habeas Corpus in Will County Circuit Court, a competent Court, and the judge of said Court allowed the Petition to be filed, appointed counsel for petitioner, considered the Petition, and denied it about March 1, 1943 (Tr. 11).

At the March term, 1943, of the Supreme Court of Illinois, an application for Habeas Corpus Writ was made by petitioner which was denied on March 18, 1943 (Tr. 12, 13), and again at the May term, 1943, petitioner was allowed to sue for a Writ of Habeas Corpus and it was denied (Tr. 3).

On June 9, 1943 the original petition in this case was filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, by leave of Court, on November 9, 1943, and Martin S. Gerber was appointed as counsel for petitioner (Tr. 28, 29).

A motion to dismiss the petition and deny the writ was filed on November 18, 1943, by the Attorney General of the State of Illinois representing the Warden of the Statesville Penitentiary (Tr. 29).

The writ was allowed and issued on December 22, 1943, and returned as served on the Warden on December 28, 1943 (Tr. 39, 40).

On February 11, 1944, the Warden filed his return to the writ (Tr. 40).

THE WARDEN'S RETURN.

The return of the Warden is documented and verified. It states, in substance, that the cause of petitioner's detention is a mittimus authorizing the imprisonment of petitioner for a period of ten years to life by virtue of a conviction for armed robbery.

Upon the question of petitioner's sanity at the time he was tried for said crime, the return sets out that it is,

> "The duty of the Department of Public Welfare, upon the recovery of one who had theretofore been declared insane, to determine whether or not he had recovered from his insanity . . . ;"

and says that,

> "the Department of Public Welfare under the authority vested upon it by the Statute of the State of Illinois, did find petitioner sane and returned him for trial . . . ;"

and further says that petitioner is now sane and was sane when tried (Tr. 46).

The Warden sets out, as Exhibit "C" to his return, the discharge record of the Department of Public Welfare (Tr. 52). From this order of discharge it appears that it was entered upon the report of a Mental Health Officer under whose observation Mazy had been since his admission into the institution, dated March 1, 1928, that,

> "Mazy shows no sign of mental disease and should be returned for trial . . . ;

that the managing officer of the hospital

> "recommends that Mazy be returned to St. Clair County for trial . . . ;"

and that the

> "States Attorney of St. Clair County requests that this action be taken . . . .

therefore the Director of Public Welfare authorized the managing officer of the hospital

> "to discharge Alex Mazy from the institution in accordance with the provisions of the law and return said patient to the sheriff of St. Clair County Illinois" (Tr. 52).

THE ADMITTED FACTS.

The facts were stipulated in detail, the substance of which is that prior to the return of the indictment while held under arrest on a charge of robbery petitioner became insane and in a sanity hearing was found to be so by a jury and on its verdict petitioner was committed to an insane hospital; that petitioner was indicted for said crime while so confined; and that without a furhter trial for his sanity, he was later arraigned under the indictment, counsel appointed, and he was tried, convicted, and sentenced. Petitioner was held under the mittimus of that judgment of conviction from May 1928 until discharged by the District Court.

THE APPLICABLE STATUTE.

Section 593 of the Criminal Code of Illinois, Chapter 38 Revised Statutes, provides as follows:

> "593. Becoming Insane. A person that becomes lunatic or insane after the commission of a crime or misdemeanor shall not be tried for the offense during the continuance of the lunacy or insanity.
>
> "If after the verdict of guilt, and before judgment pronounced, such person becomes lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue, and if, after judgment and before execution of the sentence, such person becomes lunatic or insane, then in case the punishment be capital the execution thereof shall be stayed until the recovery of said person from the insanity or lunacy.
>
> "In all of these cases, it shall be the duty of the court to impanel the jury to try the question whether the accused be, at the time of impaneling, insane or lunatic."

THE VIEWPOINT OF THE DISTRICT JUDGE.

The controlling facts as stipulated were set out in a written opinion filed in the record by the trial judge, Honorable William J. Campbell (Tr. 69-74). He was of the opinion that a duty was imposed by those facts upon the St. Clair County Circuit Court to determine petitioner's mental condition before his arraignment and trial, and said: "I hold that its failure so to do makes its judgment absolutely void" (Tr. 73).

Judge Campbell said:

> "This court under the law cannot be concerned with the guilt or innocence of the petitioner, nor the nature of the crime for which he stands convicted. It is merely its duty to determine whether or not the State court had jurisdiction to arraign, try, and proceed to judgment in the case of this petitioner. Without the court having such jurisdiction the petitioner is being detained of his liberty on a void judgment. Although the State officials have had knowledge that the petitioner was put on trial before a sanity restoration proceeding took place, they have taken no steps to free the prisoner from the effects of the judgment" (Tr. 73).

With respect to comity between Federal and State governments Judge Campbell said he was not disturbing that relationship,—which required respect by each for the judgments of the other, for the reason that the hearing developed that the judgment was admittedly void because the mandatory provisions of the Illinois Statute were ignored. The court pointed out that, legally speaking, petitioner was never arraigned, tried, or convicted because the mandatory provisions of the statute above quoted were ignored (Tr. 72).

Judge Campbell then said that he was of the opinion that a duty was imposed upon the St. Clair County Circuit Court

> "to determine his (Mazy's) mental condition before his arraignment and trial. I hold that its failure so to do makes its judgment absolutely void . . . ;"

and that without jurisdiction to arraign, try, and adjudge the case,

> "the petitioner is being detained of his liberty on a void judgment . . ."

The Judge then observed:

> "Although the State officials have had knowledge that the petitioner was put on trial before a sanity restoration proceeding took place, they have taken no steps to free the prisoner from the effects of the judgment" (Tr. 73).

The Attorney General of Illinois, standing, and continuing to stand, squarely upon the record as a legal justification for the continued imprisonment of petitioner, regardless of the admitted facts, the court ordered the discharge of petitioner.

The Attorney General of Illinois perfected an appeal on behalf of the Warden to the Circuit Court of Appeals for the Seventh Circuit where upon consideration the judgment of discharge was reversed.

The Attorney General of Illinois contended in the Circuit Court of Appeals that the applicable Illinois Statute

> "expressly authorized the trial of petitioner without further judicial proceedings and vested authority to determine sanity in the State Commissioners of Public Charities or their subordinates."

and further contended that if the District Court were right in its conclusion that the judgment of conviction was void because petitioner was not adjudicated to have been restored to sanity before trial, then petitioner should have been remanded to an appropriate Illinois psychiatric institution; but, if on the other hand, the Circuit Court of St. Clair County were right, petitioner should be remanded to the penitentiary warden.

THE VIEW OF THE CIRCUIT COURT OF APPEALS.

The opinion of the Circuit Court of Appeals is based upon certain viewpoints: (1) there was no resort to proceedings in the State courts to obtain release upon the ground on which he was discharged; (2) that the judgment of the District Court is based upon a construction of the Illinois Statute which raises a state or non-federal question rather than a federal one; (3) that the release from the sanity confinement and trial without a new adjudication of sanity was presumably pursuant to the official duty, and presumably pursuant to the duly authorized request of the States Attorney; (4) that the Circuit Court of Appeals could not say that the Illinois statute in question requires a jury trial for restoration to sanity.

It is contended that the judgment of the Circuit Court of Appeals is based upon an erroneous conception of the record and of its legal aspects as well; and that the judgment of the District Court had ultimate justice as its base.

JURISDICTION.

This Court has jurisdiction to review this cause under Section 237B of the Judicial Code as amended, 43 Stat. 927, 28 U.S.C.A. Sec. 344 (b).

The date of the final order of the Circuit Court of Appeals denying petition for rehearing was July 13, 1945; this Court extended the time for filing petition for certiorari to November 1, 1945.

QUESTIONS PRESENTED.

I.

Where the petition, return, and stipulated facts, show the petitioner to have been tried, convicted and sentenced while he was under an adjudication of insanity, and was imprisoned, and continued to be imprisoned under such judgment, and where the Attorney General of the State, knowing the record, insists upon further holding the petitioner as a prisoner under such record, did the District Court err in discharging the prisoner on Writ of Habeas Corpus?

II.

Where the judgment showed no reversible error upon its face, and the writ of error coram nobis is not applicable, and Petition for Habeas Corpus had been applied for in the State courts and denied, and the record before the District Court showed that the defendant when tried was under adjudication of insanity and the Attorney General of the State insisted the judgment was legal and the petitioner then sane, and that he should be remanded to the Warden, was the Court justified in relieving petitioner

from further imprisonment under his Petition for the Writ of Habeas Corpus?

III.

Where the judgment under which a state is imprisoning a petitioner is void, and the state insists upon continuing such imprisonment undersuch void judgment, is the District Court waranted in discharging a prisoner from such imprisonment under his Petition for the Writ of Habeas Corpus.

IV.

Where it is obvious that the State has no other program than to continue the imprisonment of the petitioner under a void judgment, is the District Court warranted in discharging the prisoner from such imprisonment?

V.

Where the admitted facts show that the petitioner is being imprisoned without due process of law, is it necessary to remand a pauper petitioner to the State courts to determine whether the State courts will discharge petitioner?

REASONS FOR ALLOWANCE OF THE WRIT.

I.

The continued imprisonment of petitioner under the judgment of a life sentence imposed upon him while he was under adjudication of insanity is the judicial sanction of life imprisonment of a citizen of the United States without due process of law which should not be permitted to stand unchallenged upon the judicial records of the United States courts.

II.

This case presents an exception to the general rule as to when a petitioner for discharge under Habeas Corpus on a federal ground must exhaust every state remedy available before applying to a federal court for relief and a decision upon the question will be useful to the lawyers and the judiciary.

III.

A decision in this case will further clarify the construction to be put upon the holding of the Supreme Court of Illinois,—that it decides Habeas Corpus cases only upon the certified records presented by the petition, and whether it is necessary to present a case requiring evidnce to any court of Illinois having coordinate jurisdiction with the llinois Supreme Court. Is the remedy automatically exhausted and can application be made direct to the District Court?

IV.

We find no decision by this Court as to whether a District Court would be justified in taking jurisdiction to discharge petitioner from imprisonment in a Habeas Corpus proceeding where the record showed he was being confined under an obviously void order where there was background of fruitless effort to be released from imprisonment.

V.

We do not find any decision which holds that where a District Court finds before it a petitioner held under an admittedly void judgment that it is necessary to remand the prisoner back to the penitentiary so that a state court may be applied to for relief from such void judgment. A decision of this question will be useful to bench and bar.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

The Opinion Below.

The opinion of the Circuit Court of Appeals rendered in this cause is reported as *United States of America, ex rel. Alex Mazy* v. *Joseph E. Ragen, Warden,* 149 Fed. 2d 948.

Specification of Errors.

The Circuit Court of Appeals erred in reversing the judgment of the District Court.

Prayer.

Wherefore it is respectfully requested that the Writ of Certiorari be allowed and that the Writ be granted to review the judgment of the Circuit Court of Appeals for the Seventh Circuit.

Alex Mazy,
Petitioner

By Francis S. Clamitz,
Martin S. Gerber,
Counsel for petitioner
1 N. LaSalle Street
Chicago, Illinois.

Luis Kutner,
Of counsel for petitioner
330 S. Wells St.
Chicago, Illinois.

ARGUMENT.

Statement.

The petitioner, action pro se, presented an informal petition for Habeas Corpus to the Clerk of the District Court at Chicago and was allowed to file it and to prosecute as a poor person (Tr. 2, 9). Counsel was appointed for petitioner and the Attorney General of Illinois, on behalf of the Warden, appeared, and moved to dismiss the petition.

From papers attached to the petition it appeared that, while held in custody awaiting action of the grand jury, petitioner was charged to be insane; and pursuant to the Criminal Code provision of Illinois law, a jury was impanelled by the Circuit Court of St. Clair County, Illinois, a competent Court, petitioner was tried for insanity, found insane, and was committed to the Hospital for the Criminal Insane at Menard, Illinois, until restored, then to be returned to the authorities of St. Clair County, Illinois, for trial of the charge of robbery (Tr. 15-16).

It also appeared that petitioner had been returned from the Insane institution, put to trial, convicted, and sentenced to ten years to life imprisonment in 1928 and was then confined in the penitentiary under that sentence.

From other papers attached to the petition it appeared the petitioner had been feebly groping from one court to another in a pitiable effort to present his case to some court for consideration. He got no constructive cooperation,—only the cold official negative. He was just another forgotten man crying from the depths of the dungeon. He

had written to the Attorney General of Illinois in December 1942 and sent a Petition for Mandamus, (the contents of which we do not know) and which the Attorney General returned with the advice that the Clerk of the Supreme Court, on conference, had refused to file his petition and telling petitioner that he should move for leave to file it in the Supreme Court accompanied by a petition for leave to sue as a poor person (Tr. 14).

Petitioner, on January 15, 1943 asked leave to file a Mandamus petition in the Supreme Court of Illinois and sue as a poor person and his motion was denied without comment (Tr. 15).

On March 1, 1943, petitioner applied to the Circuit Court of Will County, the county in which petitioner was confined, for leave to file a Petition for Habeas Corpus; it was allowed to be filed, counsel for petitioner appointed, the Petition considered, and then denied because, on the face, it did not show occasion for issuance of the writ (Tr. 11).

On March 18, 1943, petitioner asked leave to file a Petition for Habeas Corpus, and sue as a poor person, in the Ilinois Supreme Court, and was denied with the comment that the petition presented did not give sufficient of the record upon which to base a judgment of Habeas Corpus, and that an action in Habeas Corpus could not be used as a substitute for a writ of error to review errors (Tr. 12, 13).

On May 13, 1943, petitioner filed another petition in the Supreme Court of Illinois for leave to sue as a poor person and for Writ of Habeas Corpus. The motion for leave to sue as a poor person was alowed and the Wrilt of Habeas Corpus denied (Tr. 3).